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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company) CC Docket No. 97-121
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell)
Long Distance for Provision of In-Region)
InterLATA Services in Oklahoma)

COMMENTS OF BELL ATLANTIC¹

Despite the express terms of the 1996 Act, the long distance incumbents and their allies have propagated a series of myths about what is required for a Bell operating company to obtain long distance relief — myths that undoubtedly will be repeated here. These myths, however, are directly contradicted by the express language of the Act, by the legislative history, and by the pro-competitive policies that underlie the Act.

For example: The long distance incumbents claim that a Bell operating company cannot obtain long distance relief unless there is widespread local competition in a State; in reality, Congress expressly rejected such a requirement. The long distance incumbents claim that a Bell operating company cannot obtain long distance relief unless it provides each of the checklist items through a single agreement; in reality, the Act allows the Bell operating company to make the checklist items available through one or more agreements, a statement of

¹ "Bell Atlantic" includes Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc., and Bell Atlantic Communications, Inc.

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generally available terms, or a combination of the two. The long distance incumbents claim that a Bell operating company cannot obtain long distance relief unless a competitor is actually using each of the checklist items; in reality, the Act requires a Bell operating company only to make available, or generally offer to make available, each of the items on the checklist. And the long distance incumbents claim that a Bell operating company cannot even apply for long distance relief under the so called Track B alternative if it has received any request for interconnection; in reality, the Act allows a Bell operating company to do so absent a timely request from a competing provider of local exchange service to business and residence customers that offers service predominantly over its own facilities.

ARGUMENT

The 1996 Act has one overriding purpose: to “open[] all telecommunications markets to competition.” H.R. Rep. No. 458, 104th Cong., 2d Sess. 113 (1996)(“Conf. Rep.”). In keeping with that goal, the Act permits a Bell operating company to provide in-region long distance service once it has opened its local market to competition.

The 1996 Act is clear about what is required for a Bell operating company to show that its local market is sufficiently open to obtain long distance relief: It must satisfy each of 14 items in a statutorily prescribed checklist, § 271(c)(2)(B); and it must make each of the checklist items available through one or more approved agreements, a statement of generally available terms, or a combination of the two, § 271(c)(2)(A).

In addition, and separate from the issue of checklist compliance, the Act is equally clear about when a Bell operating company is entitled to apply for relief: It may apply under the so-called Track A alternative if it is providing interconnection under one or more state approved agreements with competing providers of local exchange service to business and residence

customers that offer service predominantly over their own facilities, § 271(c)(1)(A). Or, absent a timely request for interconnection from “such provider,” it may apply under the so-called Track B alternative if it has an effective statement of the terms under which it generally offers to provide interconnection, § 271(c)(1)(B).

Despite these clear statutory standards, the long distance incumbents have propagated a series of myths about the requirements to obtain long distance relief — myths that should be debunked once and for all.

A. The Act Does Not Require Widespread Local Competition

Despite the oft-repeated claims of the long distance incumbents, the Act does not require that competitors be operating on any minimum scale or that competitors obtain any particular market share.

On the contrary, Congress expressly rejected proposals that would have required a minimum level of actual competition before a Bell operating company could provide long distance. For example, Senator Kerrey proposed an amendment that would have conditioned long distance entry on reaching an interconnection agreement with a competitor “capable of providing a substantial number of business and residential customers with” service. 141 Cong. Rec. S8310-03, S8319 (daily ed. June 14, 1995). In the ensuing debates — where the Kerrey amendment was ultimately rejected — all sides understood that the bill, absent the amendment, would allow long distance entry once the Bell operating company had an interconnection

agreement with a qualifying carrier, even if the agreement was with a small carrier serving only a few customers. Id., S8319-20.²

While this alone is a conclusive answer to the claims of the long distance incumbents, Congress went further and expressly allowed a Bell operating company to obtain long distance relief even in the complete absence of a local competitor. Under the so-called Track B alternative set out in section 271(c)(1)(B), a Bell operating company that faces no local competition is still entitled to long distance relief so long as it offers to make all the checklist items available to any future competitors through an effective statement of generally available terms on file with the State commission. As the Conference Report explains, the Track B alternative "is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor . . . has sought to enter the market." Conf. Report at 148.³

As Congress undoubtedly recognized, moreover, the standard urged by the long distance incumbents — but rejected by Congress — would have left a Bell operating company hostage to the business plans of its competitors, many of whom have every reason to try to prevent long distance entry. For example, under the most extreme version of the argument, a Bell operating company could be foreclosed from providing a competing long distance service merely because its competitors elect not to enter the residential market on a large scale, and to

² A similar proposal in the House to require a ten percent share of the local market by competitors before a Bell operating company could enter long distance also failed. See 141 Cong. Rec. H8425-06, H8454 (daily ed. Aug. 4, 1995)(Statement of Rep. Bunn).

³ As Senator Kerrey recognized: "It may be that local competition does not develop immediately. We should not say to a RBOC, you cannot get into long distance under that circumstance." 141 Cong. Rec. S8134-01, S8140 (daily ed. June 12, 1995).

instead focus their efforts on the more lucrative business market. This result would have been flatly inconsistent with the overriding Congressional objective to “open[] all telecommunications markets to competition.” Conf. Report at 113.

B. The Act Does Not Require That All The Checklist Items Be Available Under A Single Agreement

The long distance incumbents fare no better to the extent they claim either that each checklist item must be included in a single agreement, or that a Bell operating company cannot satisfy some checklist items through agreements and others through a statement of terms. Again, their claims are foreclosed by the Act.

Section 271(c)(2)(A) sets out the requirements to demonstrate that the local market is open: A Bell operating company meets these requirements if it is “providing” access and interconnection under “one or more agreements,” “or” it is “generally offering” access and interconnection under a statement of generally available terms, § 271(c)(2)(A)(i), and “such access and interconnection meets the requirements of subparagraph (B) of this paragraph,” § 271(c)(2)(A)(ii). Subparagraph (B), in turn, requires that the access and interconnection “provided or generally offered” by a Bell operating company must include each of 14 items in the competitive checklist set out in that provision.

This express statutory text puts the lie to the claims of the long distance incumbents. Rather than requiring a Bell operating company to include every checklist item in a single agreement, the Act expressly allows the checklist items to be included in “one or more agreements.” And the phrase “such access and interconnection” in section 271(c)(2)(A)(ii) — which requires that “such” access and interconnection include all the checklist items — plainly refers back to the prior clause, (c)(2)(A)(i), which has two parts — access and interconnection

under agreements “or” under a statement. On its face, this provision expressly permits a Bell operating company to satisfy the checklist through a combination of agreements and a statement, so long as the various checklist items are available through one “or” the other. This conclusion is only further reinforced by the provision that contains the checklist itself, subparagraph (B), which also requires only that the checklist items be “provided or generally offered.”⁴

While the express terms of the Act standing alone, are more than sufficient to resolve the issue, this reading is also confirmed by the legislative history. In fact, Congress recognized that a new competitor may not want every item on the competitive checklist, and, therefore, that agreements with competitors may not include all the checklist items. As Representative Paxson explained in floor debates: “Under these circumstances, the Bell operating company would satisfy its obligations by demonstrating, by means of a statement similar to that required by section 271(c)(1)(B), how and under what terms it would make those items available to that competitor and others when and if they are requested.” 142 Cong Rec. E262-01 (Feb 1, 1996) (emphasis added). Or, to put it another way, “[w]here the Bell operating company has offered to include all the checklist items in an interconnection agreement and has stated its willingness to offer them to others,” it “has done all that can be asked of it” and the Commission should “approve [its] application for that relief.” *Id.*

⁴ Some opponents have argued that if Congress had intended to permit an applicant to demonstrate its compliance by including some items in agreements and others in a statement, it would have used the word “and” in these provisions rather than the word “or.” But use of the word “and” would have required all the checklist items to be included in both an agreement and a statement. This would have made no sense.

In contrast, the “interpretation” urged by the long distance incumbents not only conflicts with the express terms of the Act and the legislative history, but it also would produce absurd results. Indeed, it would allow competitors to foreclose entry by a new long distance competitor through the simple expedient of omitting a single checklist item from their interconnection agreement — and to do so despite the fact that the Bell operating company had opened its local market to competition and made all the checklist items available.

C. The Act Does Not Require A Bell Operating Company To Actually Be Furnishing Every Checklist Item To Competitors

This same analysis disposes of the related claim by the long distance incumbents that a Bell operating company must actually be furnishing every checklist item to competitors that have entered into agreements before it can be allowed to provide long distance service.

In reality, the Act nowhere requires that every checklist item actually be used by a competitor. Instead, it requires only that a Bell operating company be “providing” or “generally offering” access and interconnection that includes the items on the competitive checklist, §§ 271(c)(2)(A), (c)(2)(B). A principal definition of “provide” is “to make available.” Random House Unabridged Dictionary (2nd ed.). As a result, by its terms, the Act requires only that a Bell operating company make available, or generally offer to make available, all the items on the checklist.

The reason for the approach chosen by Congress is straightforward: As Representative Paxon again made clear, “[t]he purpose of these provisions is to ensure that a new competitor has the ability to obtain any of the items from the checklist that the competitor wants.” Consequently, because “[i]t is very possible that every new competitor will not want every item on that list . . . the legislation would not require the Bell operating company to actually provide

every item to a new competitor under the agreement . . . in order to obtain in-region relief." 142 Cong. Rec. E262-01 (Feb. 29, 1996) (emphasis added). Instead, a Bell company could "satisfy its obligations" through a statement that sets out "how and under what terms it would make those items available to that competitor and others." *Id.*

Ironically, the contrary rule urged by the long distance incumbents would actually discourage interconnection agreements with facilities-based competitors. Because a competitor with its own facilities would not need to use all of the checklist items, a Bell operating company that entered into an interconnection agreement with a facilities based competitor could never rely on that agreement to demonstrate checklist compliance. As a result, it could only get long distance relief by entering into interconnection agreements with competitors that lack their own facilities and that, individually or collectively, actually use all the checklist items. This makes no sense.

D. The Act Does Not Bar An Application Under Track B When A Bell Company Receives A Request From A Non-Qualifying Competitor

Finally, the long distance incumbents are wrong that a Bell operating company is barred from applying under the so-called Track B alternative as soon as it receives any request for interconnection from any kind of competitor.

The Act is clear about when a Bell operating company is entitled to apply for relief in a given state. It may apply under section 271(c)(1)(A) — the so-called Track A alternative — if it is providing access and interconnection to its network under one or more state approved agreements with "competing providers of telephone exchange service . . . to residential and business subscribers." The statute specifies that, "[f]or the purpose of this subparagraph," such providers must offer telephone exchange service "either exclusively . . . or predominantly over

their own telephone exchange service facilities.” Alternatively, a Bell operating company may apply for relief under section 271(c)(1)(B) — the so-called Track B alternative — if “no such provider” — that is, the kind of provider described in 271(c)(1)(A) — has made a timely request for “the access and interconnection described in subparagraph (A),” and if the Bell operating company has an effective “statement of the terms and conditions that the company generally offers to provide such access and interconnection.”

The claim that a Bell operating company is foreclosed from applying under Track B whenever any interconnection requests have been filed simply cannot be squared with this express statutory text. Sections 271(c)(1)(A) and 271(c)(1)(B) — that is, Track A and Track B — were designed by Congress to be complementary. As a result, the Act expressly provides that subparagraph (B) can be invoked if “no such provider” has requested “the access and interconnection described in subparagraph (A).” On its face, the term “such provider” refers back to the definition of a qualifying provider in subparagraph (A) — a “provider” that offers “telephone exchange service . . . to residential and business subscribers . . . either exclusively . . . or predominantly over [its] own telephone exchange service facilities.” Consequently, absent a timely request for interconnection from a competitor that meets all of the requirements necessary to qualify as a Track A carrier — i.e., where there is no “such provider” — a Bell operating company is entitled to seek relief under Track B.

The legislative history confirms that Congress intended by this plain language to ensure a Bell operating company’s access to Track B relief would not be blocked by an interconnection request from a competitor that does not meet the Track A standards. The Conference Report could not be any clearer on this point: “New section 271(c)(1)(B) also is adopted from the House Amendment, and it is intended to ensure that a BOC is not effectively

prevented from seeking entry into the interLATA services market simply because no facilities based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market.” Conf. Rep. 148 (emphasis added). Consequently, the Conference Report continues, “a BOC may seek entry [under Track B]. . . provided no qualifying facilities-based competitor has requested access and interconnection.” *Id.* (emphasis added).⁵ The original author of this provision echoed the point during debate on the Conference Report: “Section 271(c)(1)(B) provides that a BOC may petition the FCC for this in-region authority if it has . . . not received any request for access and interconnection or any request for access and interconnection from a facilities-based competitor that meets the criteria in section 271(c)(1)(A).” 142 Cong. Rec. H1145-06, H1152 (daily ed., Feb. 1, 1996) (statement of Rep. Hastert) (emphasis added).

In short, as Congressman Tauzin, one of the principal sponsors of the Act, explained, a Bell operating company may file under Track B if “no request has been received from an exclusively or predominantly facilities based competing provider of telephone exchange service,” because “[s]ubparagraph (B) uses the words ‘such provider’ to refer back to the exclusively or predominantly facilities based provider described in subparagraph (A).” 141 Cong. Rec. H8425-06, H8458 (daily ed. Aug. 4, 1995) (emphasis added).

⁵ The House Report likewise explains, in nearly identical language, that the provision “is intended to ensure that a BOC is not effectively prevented from seeking entry into the long distance market simply because no facilities-based competitor which meets the criteria specified in the Act sought to enter the market.” H.R. Rep. No. 204, 104th Cong., 1st Sess. 77 (1995) (emphasis added) (“House Rep.”). As a result, “[t]o the extent a BOC does not receive a request from a competitor that comports with the criteria established by this section, it is not penalized in terms of its ability to obtain long distance relief.” *Id.* (emphasis added).

Nor can opponents legitimately claim that a Bell operating company is foreclosed from proceeding under Track B if it receives a request for access and interconnection from a competitor that claims it may, at some point in the future, satisfy all the criteria to become a qualifying Track A carrier. Under the express terms of the Act, a qualifying carrier under section 271(c)(1)(A) must currently be a “provider” of telephone exchange service . . . to residential and business subscribers”; and its local exchange service must be currently “offered by such competing provider[]” either exclusively or predominantly over its own facilities. If the carrier requesting interconnection does not meet each of these requirements — for example, because it does not provide local exchange service predominantly over its own facilities — then “no such provider” has requested the interconnection “described in subparagraph (A).”

Again, the legislative history confirms the point. In fact, the statements quoted above from the Conference Report, the House Report, and the author of the provision all make clear that a qualifying carrier is one that contemporaneously “meets” the criteria spelled out in subsection (A) — not one that “may in the future meet those criteria.” To illustrate this very point, Congressman Tauzin described several examples of the types of situations where Track B is available, such as where (1) there is “no competing provider of telephone exchange service with its own facilities or predominantly its own”; (2) there is “a competing provider of telephone exchange service with some facilities which are not predominant”; or (3) “a competing provider of telephone exchange service requests access to serve only business customers.” 141 Cong. Rec. H8425-06, H8457-58 (daily ed. Aug. 4, 1995) (emphasis added).

In fact, even a carrier that does meet the facilities based requirement of Track A, such as a cable company or CAP, cannot foreclose an application under Track B with a claim that it plans to satisfy the other criteria of section 271(c)(1)(A) at some indefinite future time. As

Congressman Tauzin explained, “[i]f a competing provider of telephone exchange with exclusively or predominantly its own facilities, for example, cable operator, requests access and interconnection,” but that provider “has an implementation schedule that albeit reasonable is very long,” then a Bell operating company is entitled to file under Track B. 141 Cong. Rec. H8425-06, H8458. This is so, Tauzin continued, because “the interconnection and access described in subparagraph (B) must be similar to the contemporaneous access and interconnection described in subparagraph (A) — if it is not, (B) applies.”

In their recent comments supporting the motion to dismiss by ALTS, the long distance incumbents had no real answer for any of this.

First, while they concede that the term “such provider” in section 271(c)(1)(B) refers back to the competing provider described in subparagraph (A), they claim that it refers only to the first sentence of (A). This is so, the argument goes, because the second sentence of (A) — which contains the facilities-based requirement — by its own terms, applies “[f]or the purpose of this subparagraph.” This is pure sophistry. The “such provider” language on its face refers back to the competing facilities based provider described in all of subparagraph (A), as the legislative history quoted above abundantly confirms. And subparagraph (B) itself makes clear that the access and interconnection requested by “such provider” must be the access and interconnection “described in subparagraph (A)” — not merely some part of subparagraph (A) as the long distance incumbents would have it.

Second, the long distance incumbents claim that Congress could not possibly have meant that the requesting carrier had to contemporaneously qualify as a predominantly facilities-based carrier on the theory that a carrier will rarely satisfy this requirement until after

it has interconnected with the Bell operating company. Congress disagreed. In fact, throughout the legislative process, Congress repeatedly emphasized that existing facilities based entities were expected to interconnect and provide competing local service. For example, the House Report pointedly noted that “it is expected that the facilities necessary for a competitive provider will be present,” and went on to explain that “the cable industry, which is expected to provide meaningful facilities-based competition, has wired 95% of the local residences in the United States and thus has a network with the potential of offering this sort of competitive alternative.” House Report 77 (emphasis added). Likewise, the Conference Report noted that “meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United States homes.” Conf. Rep. 148. And, it explained, this was more than an abstract possibility, given that “large, well established companies such as Time Warner and Jones Intercable are actively pursuing plans to offer local telephone service in significant markets,” and that “Cablevision has recently entered into an interconnection agreement with New York Telephone.” *Id.*⁶

Third, the long distance incumbents, like ALTS, point to the second sentence of section 271(c)(1)(B) — in which Congress created two exceptions that allow a Bell operating company to apply under Track B even where it has received a request from a qualifying carrier — and suggest that these exceptions somehow support their argument. But this is a complete non sequitur. That sentence merely establishes the conditions under which a Bell operating

⁶ As Senator Breaux also pointed out, “[i]n some states these agreements have already been put in place with the approval of the state public service commissions.” 142 Cong. Rec. S687-01, S713 (daily ed. Feb. 1, 1996). “In these instances,” he noted, “we see no reason why the FCC should not act immediately and favorably on a Bell company’s petition to compete. *Id.*”

company that has received a request from a carrier that does meet the “such provider” requirement will nonetheless be “considered not to have received any request” “[f]or purposes of this subparagraph.” It has nothing to do with whether a competing carrier meets the “such provider” requirement to begin with.⁷

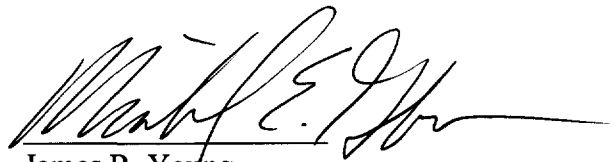
Ultimately, the long distance incumbents, again like ALTS, fall back on vague statements of supposed “policy reasons” that a Bell operating company should be barred from applying under Track B, and on claims that Track A is Congress’ preferred alternative. But Congress has already made the relevant policy choices and incorporated them into the Act; if the long distance incumbents are unhappy with those choices, their only remedy is in Congress. As the House Report makes clear, the choice made by Congress was to include the Track B alternative in the Act to ensure that, “[t]o the extent a BOC does not receive a request from a competitor that comports with the criteria established by this section, it is not penalized in terms of its ability to obtain long distance relief.” House Rep. 77.

⁷ Nor does the fact that one of the exceptions refers to an “implementation schedule” contained in an agreement provide any support. On the contrary, this merely reflects the fact that a Bell operating company may apply under Track A only when it is “providing” access and interconnection to a qualifying competitor, § 271(c)(1)(A). The implementation schedule referred to in the exception, therefore, is the schedule for a competitor to interconnect so that the Bell operating company can begin “providing” access and interconnection under the terms of the agreement. As a result, if an agreement is signed with a qualifying carrier that then fails to adhere to its agreed upon schedule and to interconnect in a timely manner, the Bell operating company can still apply for relief under Track B.

CONCLUSION

In order to give effect to the clear intent of Congress and provide consumers in all telecommunications markets the benefit of new competition, the Commission should reject the myths propagated by the long distance incumbents about what is required for a Bell operating company to obtain long distance relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James R. Young", with a long horizontal flourish extending to the right.

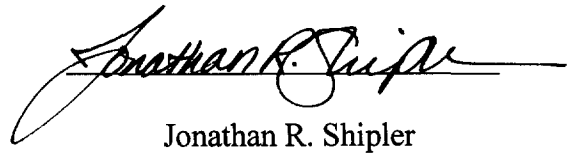
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May 1, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 1997, a copy of the foregoing
"Comments of Bell Atlantic" was sent by first class U.S. mail to the parties on the attached
list.



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